O/C.P.C/53

1953.

File No. 26/53

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P 9F

Legal Department — G **BRANCH**

Subject:- Opinions on the Civil Procedure Code

O/C.P.C/53

File No. 26/53

Gen. 194 c.

C O N T E N T S

Legal Department. File No. O.C.F./53(G-26)

Sr. No.	D. O. / L. No.	Subject	Pages.
		Opinions under the Civil Procedure Code.	
1.	G.O.C. G-302/1/-53	Writ prohibitory order from the Court whether writ of prohibition from the Court by wire in this respect can be rejected.	1-6
2.	G-501/2/-8-53	Writ recovery of Govt. dues from Partners of the firm who are also partners of the Limited Company.	7-12
3.	G-737/2-12-53	Writ prohibitory order issued to certain [illegible] Official in respect of money of certain person in the hands of Govt.	12-16

MJr/16/61
5 cs.

Submitted.

The facts in brief are as follows :-

Against the amount of Rs. 88,379 due to M/s. Patel Bros. & Co. of Baroda for completing 6 Lahore sheds, one each at Palanpur, Deesa, Sihori and Wav and 2 at Tharad an amount of Rs. 52,685/- has been paid to the Company, leaving a balance of Rs. 35,694/- The contractors have claimed an additional amount of Rs. 2,058-1-0 for extra laterials used by them. Against this an amount of Rs. 2,177-4-3 is sought to be recovered from the Company for the missing and unaccounted materials supplied by Government for the work. For the 2 incomplete Lahore sheds, one at Palanpur and the other at Tharad the contractors have submitted bills for Rs. 9,634-4-4 (Rs. 3,545-13-5 plus Rs. 6,088-6-11) but in view of the delay on the part of contractors to complete the sheds in the scheduled period and the consequent expenditure incurred by Government in engaging another contractor to complete the work, the S.E.N.C.C. has recommended that a penalty of Rs.1300/- may berecovered for each of the two sheds. This only Rs. 7,034-4-4- is due to the contractors on account of the incomplete sheds. Against this further recoveries on account of materials supplied from Poona and materials unused and unaccounted for are also proposed to be made. Further, Rs.513/12/ is due to the Co. on account of the L.Shed Rs.2545/ is to be recovered on account of the Sadhli L. Shed.

It appears from the telegram dated 17-4-53 of the Joint Civil Judge (Junior Division) Baroda that a prohibitory order for Rs. 9,771-5-0 has been granted against the balance of Naranbhai Haribhai, Proprietor Patel, Bros. & Co. Baroda. In view of the telegram it is proposed to pay a lump sum of Rs. 22,000/- to the contractors against their outstanding dues, as the balance would be more than Rs. 9,771-5-0.

R.L.A. is requested to advise before the proposed payment of Rs. 22,000/- is made.

Even though no regular prohibiting order has been received from the Court the intimation thereof by wire has to be respected. Consequently an amount sufficient to cover the prohibiting order may be retained and the balance paid to Shri Patel.

Sd/

Additional Secretary to Government,

U.R. to C.S.D. No. G- 355, dated the 19th June 1953.

VGP. 13-8-56.

Submitted.

2. Please see the note of the S.T.C.'s office on pages 89-90 ante.

3. The facts of this case, in short, are as follows :-

M/s. Nathalal Jamnadas Ltd., agreed to purchase 200 bales of cloth from the S.T.C. Bombay within one month under an undertaking executed by them on 18-9-1951 and paid a deposit of Rs. 10,000/- as security for fulfilment of the terms of the undertaking. They paid for and lifted the bales within the stipulated time and fulfilled all the conditions of the undertaking. A request was made by them to the S.T.C. Bombay for refund of the deposit of Rs. 10,000/-. However, when the company was not registered and was carrying on the business in the name and style of M/s. Nathalal Jamnadas and company, certain bales had been allotted to them from Bombay and districts. Out of the security deposits in respect of those bales, a sum of Rs. 595/7/2 is still to be paid to the firm. As against that amount, the following amounts remain to be recovered from the firm:-

		Rs.	A.	P.
1.	Freight and country craft for bales recovered from Kanara.	59	10	0
2.	Insurance charges for above bales.	635	0	0
3.	Insidental charges for the above two.	261	11	0
	To be paid to D.M.Kanara	956	5	0
4.	Recovery on account of difference in Invoice No. 163.	24	3	6
5.	Recovery on account of difference in Invoice No. EC6	548	7	7
	Total	1,529	0	1

M/s. N.J.Ltd., were requested by the S.T.C.'s office to pay the ottstanding amount before their

deposit could be refunded to them. They, however, failed to make the payment. Out of the deposit of Rs. 10,000/- Rs. 8,000/- have now been paid to the company and Rs. 2,000/- have been withheld until the settlement of the above claims of Government. M/s. N.J.Ltd have accepted the amount without prejudice and have requested the S.T.C. to pass orders for refund of the remaining amount of Rs. 2,000/- on the grounds that the firm and the company are two distinct legal persons and that legally it is not feasible to adjust the amount of the registered company against the dues recoverable from the partnership firm. The Legal Assistant to the F.A.C.A.D. has agreed with this view of the company. The S.T.C.'s office now requests R.L.A. to advise whether it is legally possible to adjust the amount of Rs. 2,000/- payable to M/s. Nathalal Jamndas Ltd. against the amount recoverable from the firm of M/s. Nathalal Jamndas.

In the case of a legal set off both parties must fill the same character in respect of the two amounts which are to be adjusted (O.S. rule 6 of the Civil Procedure Code). The dues of Messrs. Nathalal Jamndas cannot be recovered from the amount payable to Messrs.Nathalal Jamndas Ltd., which as a limited concern is a separate legal persona. The amount of Rs. 2,000/- will have to be refunded to the Limited Company and suit will have to be filed against the partners of the firm for recovery of Government dues.

Sd/

Secretary to Government.

E.R. to S.P.C. No. 6-501, dated the 20th August 1953.

VGP. 15-8-56.

Submitted with reference to C.S.D. note dated 10-11-53.

Please see the R.L.A.'s opinion No.G-293 dated 2nd July 1953. As advised in the opinion the C.S.D. instructed the Collector to take action accordingly. The Collector now informs that he requested the District Govt. Pleader to place the facts before the Civil Judge and obtain necessary orders; and the D.G.P. accordingly put in an application, in the court but the Court passed the orders without calling him and has again addressed a letter to the mamlatdar of Kopargaon requesting him to recover the amount paid to Shrimati Kundanbai Uttamchand. The Collr. further states that the prohibitory order which should have been addressed to the Magistrate, First Class who decided the case, was addressed to the Mamlatdar wrongly and as the case was decided by the Magistrate F.C. he could not have taken action regarding the recovery of the money. Now as the Judiciary has been separated from the executive the Collector considers that the Civil Judge, A'nagar should address the Resident Magistrate F.C. in the matter. He, therefore, proposes to request the mamlatdar to return the papers to the Resident Magistrate, F.C. and to ask him to appraise of the position to the Civil Judge A'nagar. C.S.D. requests the R.L.A. to state whether the action the Collector proposes to take would be in order.

The action which the Collector proposes to take asking the mamlatdar, Koparguon, to send the papers to the Resident Magistrate, First Class, Koparguon, and to appraise the Civil Judge, Senior Division, of the position is in order.

Sd/P.M.LAD.
1/12

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. u- 737, dated the 2nd December 1953.

VGP. 15-8-56.